Regulation 39-22-504.6.

- (1) Employer as Account Administrator. In order to be a medical savings account administrator, an employer must establish or have established and must maintain a self-insured health plan meeting the requirements of the federal "employee retirement income security act:, as amended.
- (a) Such plan must meet the definition of an "employee welfare benefit plan" as defined in Section 3(1) of the federal Employee Retirement Income Security Act of 1974. (29 U.S.C., Section 1002).
- (b) Such plan must meet the coverage requirements of Section 4 of the federal Employee Retirement Income Security Act of 1974. (29 U.S.C., Section 1003)
- (c) With respect to such plan, the employer must be subject to filing with the United States Secretary of Labor requirements and to the furnishing information to participants requirements of Section 101 of the federal Employee Security Act of 1974 (29 U.S.C., Section 1021).
- (d) The administration of such plan must comply with the fiduciary responsibility requirements of Part 4 of the federal Employee Security Act of 1974 (29 U.S.C., Sections 1101-1114).

(4) Eligible Medical Expense.

- (a) Eligible medical expense means expense for the medical care of the account holder, the spouse of the account holder and the dependent children of the account holder as such term is defined in section 213(d) of the Internal Revenue Code.
- (b) Premiums paid in a health insurance policy purchased by the account holder to cover the medical expenses not covered by a health insurance plan furnished to the account holder by his employer because of the deductible feature in such plan do not qualify as eligible medical expenses, 39-22-504.6(2.4), C.R.S., notwithstanding.
- (5) **Employee.** Employee means an individual who is employed in Colorado by an employer other than the United State government and on whose behalf a medical savings account is established.
- **(6) Employer.** Employer means an employer doing business in Colorado other than the United States government.
- (7) Medical Savings Account. Medical savings account means a savings account established under the provisions of section 39-22-504.7, C.R.S., to pay eligible medical expenses of the account holder, the spouse of the account holder and the dependent children of the account holder.

(8) Qualified Higher Deductible Health Plan. Qualified higher deductible health plan means health insurance with a deductible feature not in excess of \$3,000 purchased by an employer for the benefit of an employee who makes deposits into a medical savings account.

Regulation 39-22-504.7 Medical Savings Accounts.

(1) Establishment of medical savings accounts.

- (a) On or after January 1, 1995, an employer may offer to establish medical savings accounts for his employees. Such accounts are to be established by agreement between the employer and a qualified medical savings account administrator. A separate account is to be established for each employee who elects to have a medical savings account.
- (b) If an employer does not establish a medical savings account for any employee, the employee may establish his own medical savings account by agreement with a qualified medical savings account administrator.

(2) Contributions to medical savings accounts.

- (a) Each year a maximum of \$3,000 may be contributed to an employee's medical savings account. The contribution may be made by the employer, by the employee, or by a combination of the two. If the employer established the account and the employee is making the contribution, the employer shall withhold the contribution from the employee's wages and shall immediately transmit the amount withheld to the account administrator. The timing of the withholding and the amount of the withholding shall be by agreement between the employee and the employer.
- (b) Amounts contributed to a medical savings account by or on behalf of an employee and interest earned thereon shall be an allowable modification decreasing the employee's federal taxable income for the purpose of determining Colorado taxable income.
- (c) The employee shall elect to make contributions to a medical savings account by signing an election form provided by or approved by the Department of Revenue.

(3) Distributions from a Medical Savings Accounts.

- (a) Money may be distributed from a medical savings account for only one of three reasons:
- (i) to reimburse the eligible medical expenses of the account holder, the spouse of the account holder, or the dependent child of the account holder;
 - (ii) cashing out the balance in the account of a deceased account holder, or
 - (iii) cashing out an accounts holder's prior years' balance.

(b) Money withdrawn from a medical savings account for any reason other than the payment of eligible medical expenses of the account holder, the spouse of the account holder or the child of the account holder will be taxable income for Colorado income tax purposes and shall be a modification increasing federal taxable income in arriving at Colorado taxable income of the account holder, the account holder's estate, or the beneficiary receiving the money, as the case may be.

(4) Report of account administrator.

- (a) The account administrator must submit an annual report to the account holder for each calendar year within 31 days after the close of the calendar year for inclusion with the account holder's income tax return.
 - (b) The annual report required by this paragraph (4) must show:
- (i) the account holder's name and social security number;
 - (ii) the account administrator's name and Colorado income tax account number;
- (iii) the balance in the medical savings account as of the beginning of the calendar year;
 - (iv) the contributions to the account during the calendar year;
- (v) the distributions from the account during the calendar year to reimburse the account holder for eligible medical expenses;
 - (vi) the distributions from the account during the calendar for other purposes;
- (vii) the amount of interest earned by and credited to the account during the calendar year;
- (viii) the fiduciary fees and other amounts charged to the account during the calendar year; and
 - (ix) the balance in the medical savings account as of the close of the calendar year.
- (c) With regard to distributions from a medical savings account, distributions for the purpose of reimbursing the account holder for eligible medical expenses shall be deemed to be from the last monies contributed or credited to the account, and distributions for other purposes shall be deemed to be from the earliest contributions or credits remaining in the account at the time of the distribution.
- (d) It shall be the responsibility of the account administrator to make an informed decision as to whether or not a distribution is made for the purpose of reimbursing an eligible medical expanse.

(5) **Portability.** An employee may move his medical savings account from one account administrator to another only upon termination of employment. This is done by directing the first administrator to transfer the funds to the second administrator. The employee cannot move the funds himself as this would cause a taxable disbursement from the account